

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PETER ALLEN, et al.,

Plaintiffs,

-against-

NEW YORK STATE DEPARTMENT OF  
CORRECTIONS AND COMMUNITY  
SUPERVISION, et al.,  
Defendants.

No. 19 Civ. 8173 (LAP)

ORDER

LORETTA A. PRESKA, UNITED STATES DISTRICT JUDGE:

The Court has reviewed counsel's letters regarding various discovery issues. (Dkt. nos. 152, 155, 156.)

**I. Depositions**

Both sides agree that, in light of the pandemic, depositions may be taken virtually.

Given the factual situation regarding "reassessments" outlined in Plaintiffs' counsel's reply letter and Plaintiffs' related intention to move for a preliminary injunction, the depositions may cover both class certification and merits issues. Plaintiffs may take up to twenty depositions, without prejudice to a request for more, should they be necessary.

**II. Medical Records**

The Court is incredulous that Defendants' counsel has not requested medical records for the individuals who have proffered

HIPAA releases. Defense counsel shall immediately request all medical records relating to individuals who have proffered HIPAA releases and forward them immediately to Plaintiffs' counsel for scanning.

For the avoidance of doubt, because of 1) discrepancies in the contents of medical record files produced directly to Plaintiffs' counsel and those produced through Defendants' counsel, 2) Defendant's slow pace of production, and 3) Defendants' counsel's inconsistent explanations about why records for all individuals who have proffered a HIPAA release have not been requested, Defendants shall arrange for Plaintiffs' counsel to pick up, on a rolling basis beginning immediately, ALL medical records, including those in the possession of OAG, relating to ALL individuals who have proffered HIPAA releases. Plaintiffs' counsel has indicated that she is aware of her obligations with respect to inadvertently-produced materials.

Plaintiffs' request with respect to depositions and medical records (dkt. no. 152) is granted in part and denied in part.

SO ORDERED.

Dated: September 14, 2020  
New York, New York



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LORETTA A. PRESKA, U.S.D.J.